

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT  
OF NORTH CAROLINA

MICHAEL CROWELL, )  
Plaintiff, )  
vs. )  
STATE OF NORTH CAROLINA; )  
ROY COOPER, Governor of North )  
Carolina, *in his official capacity* )  
*only*; BIPARTISAN STATE )  
BOARD OF ELECTIONS AND )  
ETHICS ENFORCEMENT; )  
CHAIR, BIPARTISAN STATE )  
BOARD OF ELECTIONS AND )  
ETHICS ENFORCEMENT, )  
*in official capacity only*; )  
MEMBERS, BIPARTISAN )  
STATE BOARD OF ELECTIONS )  
AND ETHICS ENFORCEMENT, )  
*in their official capacity only*; )  
Defendants. )

Case No. 1:17-cv-00515-WO-JEP

**MOTION TO DISMISS**  
**FOR LACK OF SUBJECT MATTER JURISDICTION**

Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, in his official capacity as Speaker of the North Carolina House (collectively, “Defendant-Intervenors”), pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, as well as L.R. 7.3, hereby move this Court to dismiss Plaintiff’s action for lack of subject

matter jurisdiction. Plaintiff lacks Article III standing to prosecute his claims in this action. Further, Plaintiff's claims against the State of North Carolina and the Bipartisan State Board of Elections and Ethics Enforcement ("Bipartisan Board") are barred under the Eleventh Amendment.

Defendant-Intervenors submit contemporaneously herewith a Memorandum in support of this Motion to Dismiss and incorporate all arguments and grounds to dismiss Plaintiff's Complaint contained therein by reference. If this Court holds that Plaintiff has standing for either an equal protection or First Amendment violation, this Court should hold the remainder of its proceedings in abeyance until the state court proceeding is complete.

WHEREFORE, Defendant-Intervenors Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, in his official capacity as Speaker of the North Carolina House, respectfully request that this Court grant this Motion to Dismiss, enter an order dismissing Plaintiff's action, and grant such other and further relief as it deems proper.

Respectfully submitted this 12<sup>th</sup> day of October, 2017.

NELSON MULLINS RILEY &  
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ATTORNEYS FOR Defendant-  
Intervenors *PHILIP E. BERGER, in his  
official capacity as President Pro Tempore  
of the North Carolina Senate and  
TIMOTHY K. MOORE, in his official  
capacity as Speaker of the North Carolina  
House of Representatives*

## CERTIFICATE OF SERVICE

I hereby certify that on the 12<sup>th</sup> day of October, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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ATTORNEYS FOR Defendant-Intervenors  
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